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8 Attorneys for Defendant  
9 GARDEN FRESH RESTAURANTS LLC &  
10 JENNIE M. MARTIN, Trustee of the JULIO A. MARTIN FAMILY TRUST  
11 Dated December 5, 2003

12 UNITED STATES DISTRICT COURT

13 EASTERN DISTRICT OF CALIFORNIA, FRESNO COURTHOUSE

14 HENDRIK BLOCK,

15 Case No: 20:CV-00156-NONE-SAB

16 Plaintiff,

17 v.  
18 GARDEN FRESH RESTAURANTS LLC  
19 dba SWEET TOMATOES; JENNIE M.  
20 MARTIN, Trustee of the JULIO A.  
21 MARTIN FAMILY TRUST dated  
22 December 5, 2003  
23 Defendants.

DEFENDANT JENNIE M. MARTIN'S  
ANSWER TO PLAINTIFF HENDRIK  
BLOCK'S COMPLAINT

24 Complaint Filed: January 30, 2020  
25 Trial Date: None Set

26 Defendant JENNIE M. MARTIN, Trustee of the JULIO A. MARTIN FAMILY TRUST  
27 Dated December 5, 2003 ("Defendant") hereby responds to the Complaint of Plaintiff HENDRIK  
28 BLOCK ("Plaintiff") and asserts its Affirmative Defenses as follows:

1. In answering Paragraph 1 of the Complaint, Defendant states that it consists of legal conclusions to which no response is required. To the extent a response is required, Defendant states that it is without sufficient information or knowledge to admit or deny the allegations and, therefore, denies each and every allegation contained therein.

2. In answering Paragraph 2 of the Complaint, Defendant states that it consists of legal conclusions to which no response is required. To the extent a response is required, Defendant states that it is without sufficient information or knowledge to admit or deny the

1 allegations and, therefore, denies each and every allegation contained therein.

2       3. In answering Paragraph 3 of the Complaint, Defendant admits that jurisdiction is  
3 proper in this Court, but denies any allegations of wrongdoing contained therein.

4       4. In answering Paragraph 4 of the Complaint, Defendant states that it consists of  
5 legal conclusions to which no response is required. Defendant denies that supplemental  
6 jurisdiction is proper.

7       5. In answering Paragraph 5 of the Complaint, Defendant admits that jurisdiction is  
8 proper in this Court, but denies any allegations of wrongdoing contained therein.

9       6. In answering Paragraph 6 of the Complaint, Defendant admits that venue is proper  
10 in the Eastern District of California, but denies any allegations of wrongdoing contained therein.

11       7. In answering Paragraph 7 of the Complaint, Defendant states that Garden Fresh  
12 Restaurants, LLC owns and operates the subject restaurant, and that the underlying property is  
13 owned by JULIO A. MARTIN FAMILY TRUST Dated December 5, 2003. Defendant is without  
14 knowledge sufficient to admit or deny the remaining allegations.

15       8. In answering Paragraph 8 of the Complaint, Defendant is without knowledge and  
16 information sufficient to form a belief as to the truth of the allegations contained therein and,  
17 therefore, denies each and every allegation contained therein.

18       9. In answering Paragraph 9, Defendant admits that the subject restaurant is a public  
19 accommodation and open to the public.

20       10. In answering Paragraph 10 of the Complaint, Defendant states that it is without  
21 knowledge a where Plaintiff resides. Defendant denies each and every other allegation contained  
22 therein.

23       11. In answering Paragraph 11 of the Complaint, Defendant denies the existence of  
24 any barriers and that Plaintiff encountered any barriers. The remainder of the paragraph consists  
25 of legal conclusions to which no response is required. To the extent a response is required,  
26 Defendant states that it is without sufficient information or knowledge to admit or deny the  
27 allegations and, therefore, denies each and every allegation contained therein.

28       ///

1           12. In answering Paragraph 12 of the Complaint, Defendant denies each and every  
2 allegation contained therein.

3           13. In answering Paragraph 13 of the Complaint, Defendant denies each and every  
4 allegation contained therein.

5           14. In answering Paragraph 14 of the Complaint, Defendant denies each and every  
6 allegation contained therein.

7           15. In answering Paragraph 15 of the Complaint, Defendant denies each and every  
8 allegation contained therein.

9 **I. FIRST CLAIM: Americans with Disability Act of 1990**

10          16. In answering Paragraph 16 of the Complaint, Defendant incorporates its responses  
11 to Paragraphs 1 through 15 of the Complaint as if fully set forth herein.

12          17. In answering Paragraph 17 of the Complaint, Defendant states that it consists of  
13 legal conclusions and quotations of statutes to which no response is required. To the extent a  
14 response is required to any allegations, Defendant is without knowledge and information  
15 sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies  
16 each and every allegation contained therein.

17          18. In answering Paragraph 18 of the Complaint, Defendant denies each and every  
18 allegation contained therein.

19          19. In answering Paragraph 19 of the Complaint, Defendant states that it consists of  
20 legal conclusions and quotations of statutes to which no response is required. To the extent a  
21 response is required to any allegations, Defendant is without knowledge and information  
22 sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies  
23 each and every allegation contained therein.

24          20. In answering Paragraph 20 of the Complaint, Defendant states that it consists of  
25 legal conclusions and quotations of statutes to which no response is required. To the extent a  
26 response is required to any allegations, Defendant is without knowledge and information  
27 sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies  
28 each and every allegation contained therein.

1           21. In answering Paragraph 21 of the Complaint, Defendant denies each and every  
2 allegation contained therein.

3           22. In answering Paragraph 22 of the Complaint, Defendant denies each and every  
4 allegation contained therein.

5           23. In answering Paragraph 23 of the Complaint, Defendant is without knowledge and  
6 information sufficient to form a belief as to the truth of the allegations contained therein and,  
7 therefore, denies each and every allegation contained therein.

8           24. In answering Paragraph 24 of the Complaint, Defendant states that it consists of  
9 legal conclusions and quotations of statutes to which no response is required. To the extent a  
10 response is required to any allegations, Defendant is without knowledge and information  
11 sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies  
12 each and every allegation contained therein.

13          25. In answering Paragraph 25 of the Complaint, Defendant denies each and every  
14 allegation contained therein.

15          26. In answering Paragraph 26 of the Complaint, Defendant is without knowledge and  
16 information sufficient to form a belief as to the truth of the allegations contained therein and,  
17 therefore, denies each and every allegation contained therein.

18          27. In answering Paragraph 27 of the Complaint, Defendant states that it consists of  
19 legal conclusions and quotations of statutes to which no response is required. To the extent a  
20 response is required to any allegations, Defendant is without knowledge and information  
21 sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies  
22 each and every allegation contained therein.

23          28. In answering Paragraph 28 of the Complaint, Defendant denies each and every  
24 allegation contained therein.

25          29. In answering Paragraph 29 of the Complaint, Defendant states that it consists of  
26 legal conclusions and quotations of statutes to which no response is required. To the extent a  
27 response is required to any allegations, Defendant is without knowledge and information  
28 sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies

1 each and every allegation contained therein.

2       30. In answering Paragraph 30 of the Complaint, Defendant denies each and every  
3 allegation contained therein.

4       31. In answering Paragraph 31 of the Complaint, Defendant denies each and every  
5 allegation contained therein.

6       32. In answering Paragraph 32 of the Complaint, Defendant denies each and every  
7 allegation contained therein.

8       33. In answering Paragraph 33 of the Complaint, Defendant states that it consists of  
9 legal conclusions and quotations of statutes to which no response is required. To the extent a  
10 response is required to any allegations, Defendant is without knowledge and information  
11 sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies  
12 each and every allegation contained therein.

13 **II. SECOND CLAIM: Unruh Act**

14       34. In answering Paragraph 34 of the Complaint, Defendant incorporates its responses  
15 to Paragraphs 1 through 33 of the Complaint as if fully set forth herein.

16       35. In answering Paragraph 35 of the Complaint, Defendant states that it consists of  
17 legal conclusions and quotations of statutes to which no response is required. To the extent a  
18 response is required to any allegations, Defendant is without knowledge and information  
19 sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies  
20 each and every allegation contained therein.

21       36. In answering Paragraph 36 of the Complaint, Defendant states that it consists of  
22 legal conclusions and quotations of statutes to which no response is required. To the extent a  
23 response is required to any allegations, Defendant is without knowledge and information  
24 sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies  
25 each and every allegation contained therein.

26       37. In answering Paragraph 37 of the Complaint, Defendant states that it consists of  
27 legal conclusions and quotations of statutes to which no response is required. To the extent a  
28 response is required to any allegations, Defendant is without knowledge and information

1 sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies  
2 each and every allegation contained therein.

3       38. In answering Paragraph 38 of the Complaint, Defendant denies each and every  
4 allegation contained therein.

5       39. In answering Paragraph 39 of the Complaint, Defendant denies each and every  
6 allegation contained therein.

7       40. In answering Paragraph 40 of the Complaint, Defendant denies each and every  
8 allegation contained therein.

9       41. In answering Paragraph 41 of the Complaint, Defendant states that it consists of  
10 legal conclusions and quotations of statutes to which no response is required. To the extent a  
11 response is required to any allegations, Defendant is without knowledge and information  
12 sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies  
13 each and every allegation contained therein.

14 **III. THIRD CLAIM: Unruh Act**

15       42. In answering Paragraph 42 of the Complaint, Defendant incorporates its responses  
16 to Paragraphs 1 through 41 of the Complaint as if fully set forth herein.

17       43. In answering Paragraph 43 of the Complaint, Defendant states that it consists of  
18 legal conclusions and quotations of statutes to which no response is required. To the extent a  
19 response is required to any allegations, Defendant is without knowledge and information  
20 sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies  
21 each and every allegation contained therein.

22       44. In answering Paragraph 44 of the Complaint, Defendant states that it consists of  
23 legal conclusions and quotations of statutes to which no response is required. To the extent a  
24 response is required to any allegations, Defendant is without knowledge and information  
25 sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies  
26 each and every allegation contained therein.

27       45. In answering Paragraph 45 of the Complaint, Defendant is without knowledge and  
28 information sufficient to form a belief as to the truth of the allegations contained therein and,

1 therefore, denies each and every allegation contained therein.

2       46. In answering Paragraph 46 of the Complaint, Defendant denies each and every  
3 allegation contained therein.

## **PRAYER FOR RELIEF**

Defendant states that the remainder of the Complaint consists of legal conclusions and Plaintiff's request for relief to which no response is required. To the extent a response is required, Defendant denies each and every allegation contained therein and that Plaintiff is entitled to any relief whatsoever.

## **AFFIRMATIVE DEFENSES**

## **FIRST AFFIRMATIVE DEFENSE**

11       1. Plaintiff's Complaint and each purported cause of action asserted against  
12 Defendant therein fails to set forth facts sufficient to constitute a claim and/or state a claim upon  
13 which relief may be granted.

## **SECOND AFFIRMATIVE DEFENSE**

15       2. Plaintiff's complaint, and each and every cause of action therein, is barred by the  
16 applicable statute of limitations, including but not limited to California *Code of Civil Procedure*  
17 sections 335.1 and 340(a).

### **THIRD AFFIRMATIVE DEFENSE**

19       3. Plaintiff lacks standing to bring the causes of action asserted in his Complaint and,  
20 to the extent he has standing to bring his Complaint, Plaintiff lacks standing to challenge any  
21 alleged barriers not specifically identified and set forth therein. Plaintiff further lacks standing  
22 to challenge any alleged barriers identified in his Complaint for which he fails to explain how  
23 the barriers allegedly impaired his ability to access the property and/or bar.

## **FOURTH AFFIRMATIVE DEFENSE**

25       4. Plaintiff is estopped by his conduct from recovering any relief sought in the  
26 complaint, or in any purported cause of action alleged therein.

## **FIFTH AFFIRMATIVE DEFENSE**

28 | 5. Plaintiff's claims are barred by the doctrine of unclean hands.

1                   **SIXTH AFFIRMATIVE DEFENSE**

2         6.      By his conduct, Plaintiff has waived any right to recover any relief sought in the  
3 Complaint, or in any purported cause of action alleged therein.

4                   **SEVENTH AFFIRMATIVE DEFENSE**

5         7.      If Defendant is responsible in any respect for any injuries or damages suffered by  
6 Plaintiff, which Defendant expressly denies, such injuries or damages have been caused by or  
7 contributed to by others, and Defendant's proportional liability, if any, should be reduced to the  
8 extent thereof.

9                   **EIGHTH AFFIRMATIVE DEFENSE**

10       8.      The accommodations requested by Plaintiff and/or removal of the alleged  
11 structural barriers to access of persons with disabilities are not readily achievable, nor are  
12 alternative methods readily achievable, easily accomplishable, technically feasible, would create  
13 safety hazards, and/or result in an undue burden on Defendant and others.

14                   **NINTH AFFIRMATIVE DEFENSE**

15       9.      Plaintiff's claims are barred because Plaintiff failed to take reasonable measures  
16 to learn of or use the accessible facilities at the property. Further, Plaintiff failed to request any  
17 adaptations, modifications, alternative services, or other changes to the property prior to initiating  
18 his lawsuit.

19                   **TENTH AFFIRMATIVE DEFENSE**

20       10.     Defendant did not intentionally impede or impair access to Plaintiff and alleges  
21 that to the extent any alleged discriminatory conduct occurred, which it did not, that such conduct  
22 was not intentional.

23                   **ELEVENTH AFFIRMATIVE DEFENSE**

24       11.     Plaintiff is not entitled to recover any attorneys' fees and costs on the grounds that  
25 Defendant had already taken and/or initiated measures to address the sought after relief prior to  
26 the initiation of Plaintiff's lawsuit, thereby rendering his claims moot.

27                   **TWELFTH AFFIRMATIVE DEFENSE**

28       12.     Plaintiff's claims are barred because he is a vexatious litigant.

## **THIRTEENTH AFFIRMATIVE DEFENSE**

2        13. Defendant expressly reserves the right to amend its answer and to assert  
3 additional affirmative defenses, and to supplement, alter or change its answer and affirmative  
4 defenses upon revelation of more definitive facts by Plaintiff and upon Defendant's undertaking  
5 of discovery and investigation of this matter. Accordingly, the right to assert additional  
6 affirmative defenses, if and to the extent that such affirmative defenses are applicable, is hereby  
7 reserved.

8 WHEREFORE, Defendant prays as follows:

- 9           1. That Plaintiff take nothing by his complaint for damages;

10          2. That Plaintiff's complaint herein be dismissed in its entirety with prejudice;

11          3. That Defendant recover its costs of suit herein, including its reasonable attorneys'

12 fees and costs pursuant to applicable law; and

13          4. That the court award such other and further relief as it deems appropriate.

15 | Dated: May 8, 2020

Respectfully submitted,

FISHER & PHILLIPS LLP

*/s/ Nathan V. Okelberry*

NATHAN V. OKELBE

**Attorneys for Defendant**

# GARDEN FRESH RESTAURANT

JENNIE M. MARTIN, Trustee of the JULIO  
A. MARTINEZ FAMILY ULTRAVIST

A. MARTIN FAMILY TRUST  
P.O. 1500000000

Dated December 5, 2003

## CERTIFICATE OF SERVICE

I, the undersigned, am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; am employed with Fisher & Phillips LLP and my business address is 444 South Flower Street, Suite 1500, Los Angeles, California 90071.

On May 8, 2020 I served the foregoing document entitled **DEFENDANT GARDEN FRESH RESTAURANTS LLC'S ANSWER TO PLAINTIFF HENDRIK BLOCK'S COMPLAINT** on all the appearing and/or interested parties in this action as follows:

Tanya E. Moore, SBN 206683  
Moore Law Firm, P.C.  
300 South First Street, Ste. 342  
San Jose, California 95113  
Telephone (408) 298-2000  
Facsimile (408) 298-6046

Atorneys for Plaintiff  
**HENDRIK BLOCK**

E-mail:  
[service@moorelawfirm.com](mailto:service@moorelawfirm.com)  
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- [by MAIL] - I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one day after date of deposit for mailing this affidavit.

[by ELECTRONIC SUBMISSION] - I served the above listed document(s) described via the United States District Court's Electronic Filing Program on the designated recipients via electronic transmission through the CM/ECF system on the Court's website. The Court's CM/ECF system will generate a Notice of Electronic Filing (NEF) to the filing party, the assigned judge, and any registered users in the case. The NEF will constitute service of the document(s). Registration as a CM/ECF user constitutes consent to electronic service through the court's transmission facilities.

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed May 8, 2020 at Los Angeles, California.

MELODY BIGLAY

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Print Name

By: /s/ Melody Biglay

Signature